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MAY 18 2016

May 13, 2016

VIA CERTIFIED MAIL

Scott Farley, Partner
Kernen Construction Co.
P.O. Box 1340
Blue Lake, CA 95525

Scott Farley, Partner
Kernen Construction Co., Glendale Yard
2350 Glendale Drive
McKinleyville, CA 95519

Kurt Kernen, Agent for Service of Process
Bedrock Investments, LLC
2350 Glendale Road
Arcata, CA 95519

Re: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE FEDERAL WATER POLLUTION CONTROL ACT ("CLEAN WATER ACT") (33 U.S.C. §§ 1251 *et seq.*)

Dear Mr. Farley and Mr. Kernen:

This firm represents Californians for Alternatives to Toxics ("CATs") in regard to violations of the Clean Water Act ("the Act") occurring at Kernen Construction Company's ("Kernen Construction") Glendale Yard located at 2350 Glendale Drive, in McKinleyville, California (the "Facility"). This letter is being sent to you as the responsible owners, officers and/or operators of the Facility. Unless otherwise noted, Kernen Construction Co., Bedrock Investments, LLC, Mr. Farley and Mr. Kernen shall hereinafter be collectively referred to as "Kernen Construction." CATs is a non-profit association dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including the waters into which Kernen Construction discharges polluted storm water.

Kernen Construction is in ongoing violation of the substantive and procedural requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 92-12-DWQ, Order No. 97-03-DWQ, and Order 2014-0057-DWQ ("General Permit" or "Permit").[1]

On July 1, 2015 the 2015 General Permit went into effect, superseding the 1997 General Permit that was operative between 1997 and June 30, 2015. The 2015 General Permit includes

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[1] Kernen Construction submitted a Notice of Intent (NOI) to comply with the General Permit for the Glendale Yard Facility on or about June 8, 2015.

many of the same fundamental requirements and implements many of the same statutory requirements as the 1997 General Permit. Violations of both the 1997 and 2015 General Permit provisions are enforceable under the law. 2015 General Permit, Finding A.6.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Kernen Construction to a penalty of up to $37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CATs will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

The Clean Water Act requires that sixty (60) days prior to the initiation of a citizen-enforcement action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen enforcer must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the Chief Administrative Officer of the water pollution control agency for the State in which the violations occur. *See* 40 C.F.R. § 135.2. As required by the Act, this letter provides statutory notice of the violations that have occurred, and continue to occur, at the Facility. 40 C.F.R. § 135.3(a). At the expiration of sixty (60) days from the date of this letter, CATs intends to file suit under Section 505(a) of the Act in federal court against Kernen Construction for violations of the Clean Water Act and the Permit.

I. Background.

A. The Clean Water Act.

Congress enacted the CWA in 1972 in order to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251. The Act prohibits the discharge of pollutants into United States waters except as authorized by the statute. 33 U.S.C. § 1311; *San Francisco BayKeeper, Inc. v. Tosco Corp.*, 309 F.3d 1153, 1156 (9th Cir. 2002). The Act is administered largely through the NPDES permit program. 33 U.S.C. § 1342. In 1987, the Act was amended to establish a framework for regulating storm water discharges through the NPDES system. Water Quality Act of 1987, Pub. L. 100-4, § 405, 101 Stat. 7, 69 (1987) (codified at 33 U.S.C. § 1342(p)); *see also Envtl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 840-41 (9th Cir. 2003) (describing the problem of storm water runoff and summarizing the Clean Water Act's permitting scheme). The discharge of pollutants without an NPDES permit, or in violation of a permit, is illegal. *Ecological Rights Found. v. Pacific Lumber Co.*, 230 F.3d 1141, 1145 (9th Cir. 2000).

Much of the responsibility for administering the NPDES permitting system has been delegated to the states. *See* 33 U.S.C. § 1342(b); *see also* Cal. Water Code § 13370 (expressing California's intent to implement its own NPDES permit program). The CWA authorizes states with approved NPDES permit programs to regulate industrial storm water discharges through individual permits issued to dischargers and/or through the issuance of a single, statewide

general permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(b). Pursuant to Section 402 of the Act, the Administrator of EPA has authorized California's State Board to issue individual and general NPDES permits in California. 33 U.S.C. § 1342

B. California's General Permit for Storm Water Discharges Associated with Industrial Activities

Between 1997 and June 30, 2015, the General Permit in effect was Order No. 97-03-DWQ, which CATs refers to as the "1997 General Permit." On July 1, 2015, pursuant to Order No. 2015-0057-DWQ the General Permit was reissued, including many of the same fundamental terms as the prior permit. For purposes of this notice letter, CATs refers to the reissued permit as the "2015 General Permit." The 2015 General Permit rescinded in whole the 1997 General Permit, except for the expired permit's requirement that annual reports be submitted by July 1, 2015, and for purposes of CWA enforcement. 2015 General Permit, Finding A.6.

Facilities discharging, or having the potential to discharge, storm water associated with industrial activities that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a Notice of Intent to Comply ("NOI"). 1997 General Permit, Provision E.1; 2015 General Permit, Standard Condition XXI.A. Facilities must file their NOIs before the initiation of industrial operations. *Id.*

Facilities must strictly comply with all of the terms and conditions of the General Permit. A violation of the General Permit is a violation of the CWA.

The General Permit contains three primary and interrelated categories of requirements: (1) discharge prohibitions, receiving water limitations and effluent limitations; (2) Storm Water Pollution Prevention Plan ("SWPPP") requirements; and, (3) self-monitoring and reporting requirements.

C. Kernen Construction's Glendale Yard Facility

Kernen Construction's primary industrial activities at the approximately 37-acre Facility include storing and manufacturing rock aggregate products, storing scrap roofing shingles, storing scrap metal and storage for soil and organic debris. The industrial activities at the Facility fall under Standard Industrial Classification ("SIC") Code 5093 and 142X, which includes SIC Codes 1422, 1423, and 1429.

Kernen Construction collects and discharges storm water associated with industrial activities at the Facility through at least four (4) discharge points into Hall Creek, a tributary of Mad River, which ultimately flows into the Pacific Ocean. Hall Creek and Mad River are waters of the United States within the meaning of the Clean Water Act.

The General Permit requires Kernen Construction to analyze storm water samples for TSS, pH, and Oil and Grease. 1997 General Permit, Section B.5.c.i; 2015 General Permit, Section XI.B.6. Facilities under SIC Code 5093 must also analyze storm water samples for Iron ("Fe"); Lead ("Pb"); Aluminum ("Al"); Zinc ("Zn"); and Chemical Oxygen Demand ("COD"). 1997 General Permit, Tables 1-2; 2015 General Permit Tables 1-2.

II. Kernen Construction's Violations of the Act and Permit.

Based on its review of available public documents, CATs is informed and believes that Kernen Construction is in ongoing violation of both the substantive and procedural requirements of the CWA and the General Permit. These violations are ongoing and continuous. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Kernen Construction is subject to penalties for violations of the Act since May 13, 2011.

A. Kernen Construction Discharges Storm Water Containing Pollutants in Violation of the General Permit's Discharge Prohibitions, Receiving Water Limitations and Effluent Limitations.

Kernen Construction's storm water sampling results provide conclusive evidence of Kernen Construction's failure to comply with the General Permit's discharge prohibitions, receiving water limitations and effluent limitations. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

1. Applicable Water Quality Standards.

The General Permit requires that storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance. 1997 General Permit, Discharge Prohibition A.2; 2015 General Permit, Discharge Prohibition III.C. The General Permit also prohibits discharges that violate any discharge prohibition contained in the applicable Regional Water Board's Basin Plan or statewide water quality control plans and policies. 1997 General Permit, Receiving Water Limitation C.2; 2015 General Permit, Discharge Prohibition III.D. Furthermore, storm water discharges and authorized non-storm water discharges shall not adversely impact human health or the environment, and shall not cause or contribute to a violation of any water quality standards in any affected receiving water. 1997 General Permit, Receiving Water Limitations C.1, C.2; 2015 General Permit, Receiving Water Limitations VI.A, VI.B.

Dischargers are also required to prepare and submit documentation to the Regional Board upon determination that storm water discharges are in violation of the General Permit's Receiving Water Limitations. 1997 General Permit, p. VII; 2015 General Permit, Special Condition XX.B. The documentation must describe changes the discharger will make to its current storm water best management practices ("BMPs") in order to prevent or reduce any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. *Id.*

The California Toxics Rule ("CTR") is an applicable water quality standard under the Permit, violation of which is a violation of Permit conditions. *Cal. Sportfishing Prot. Alliance v. Chico Scrap Metal, Inc.*, 2015 U.S. Dist. LEXIS 108314, *21 (E.D. Cal. 2015). CTR establishes

numeric receiving water limits for toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes the following numeric limits for pollutants discharged by Kernen Construction: Copper – 0.013 mg/L (maximum concentration) and Lead – 0.065 mg/L (maximum concentration).

The *Water Quality Control Plan for the North Coast Region (Revised May 2011)* ("Basin Plan") also sets forth water quality standards and prohibitions applicable to Kernen Construction's storm water discharges. The Basin Plan identifies present and potential beneficial uses for the Mad River, which include municipal and domestic water supply, hydropower generation, agricultural supply, industrial service supply, navigation, wildlife habitat, warm freshwater habitat, cold freshwater habitat, warm and cold spawning, and contact and non-contact water recreation.

2. Applicable Effluent Limitations.

Dischargers are required to reduce or prevent pollutants in their storm water discharges through implementation of best available technology economically achievable ("BAT") for toxic and nonconventional pollutants and best conventional pollutant control technology ("BCT") for conventional pollutants. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. Conventional pollutants include Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. 40 C.F.R. §§ 401.15-16.

Under the General Permit, benchmark levels established by the EPA ("EPA benchmarks") serve as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. *Santa Monica Baykeeper v. Kramer Metals,* 619 F.Supp.2d 914, 920, 923 (C.D. Cal 2009); 1997 General Permit, Effluent Limitations B.5-6; 2015 General Permit, Exceedance Response Action XII.A.

The following EPA benchmarks have been established for pollutants discharged by Kernen Construction: Total Suspended Solids – 100 mg/L; Oil & Grease – 15.0 mg/L; Chemical Oxygen Demand – 120 mg/L; Aluminum – 0.75 mg/L; Iron – 1.00 mg/L; Zinc – 0.117 mg/L; and Copper – 0.0636 mg/L.

3. Kernen Construction's Storm Water Sample Results

The following discharges of pollutants from the Facility have violated the discharge prohibitions, receiving water limitations and effluent limitations of the Permit:

a. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
1/28/16	Site #1	TSS	650	100
1/28/16	Site #2	TSS	3800	100
1/28/16	Site #3	TSS	480	100
12/18/15	Site #1	TSS	170	100
12/18/15	Site #2	TSS	240	100
12/18/15	Site #3	TSS	140	100
12/3/15	Site #1	TSS	1500	100
12/3/15	Site #2	TSS	1300	100
12/3/15	Site #3	TSS	650	100
2/6/15	Site#2	TSS	300	100
2/6/15	Site #3	TSS	1500	100
12/10/14	Site #2	TSS	290	100
12/10/14	Site #3	TSS	310	100
2/7/14	Site #2	TSS	330	100
2/7/14	Site #3	TSS	670	100
12/20/12	Site #1	TSS	110	100
12/20/12	Site #2	TSS	1100	100
4/26/12	Site #2	TSS	230	100
1/19/12	Site #2	TSS	290	100
1/19/12	Site #3	TSS	600	100

b. Discharge of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark and CTR Values

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)	CTR Criteria (mg/L)
1/14/16	Site #1	Zn	0.270	0.117	0.12
1/14/16	Site #2	Zn	0.370	0.117	0.12
12/18/15	Site 1	Zn	0.120	0.117	0.12
12/3/15	Site #1	Zn	0.550	0.117	0.12
12/3/15	Site #2	Zn	0.320	0.117	0.12
12/3/15	Site #3	Zn	0.140	0.117	0.12
2/6/15	Site#2	Zn	0.160	0.117	0.12
2/6/15	Site #3	Zn	0.270	0.117	0.12
12/10/14	Site #2	Zn	0.120	0.117	0.12
2/7/14	Site #2	Zn	0.210	0.117	0.12
2/7/14	Site #3	Zn	0.130	0.117	0.12
12/20/12	Site #2	Zn	0.373	0.117	0.12

4/26/12	Site #2	Zn	0.130	0.117	0.12
1/19/12	Site #2	Zn	0.140	0.117	0.12

c. Discharge of Storm Water Containing Chemical Oxygen Demand (COD) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
1/14/16	Site #1	COD	190	120
1/14/16	Site #2	COD	330	120
12/3/15	Site #1	COD	590	120
12/3/15	Site #2	COD	440	120

d. Discharge of Storm Water Containing Aluminum (Al) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
1/14/16	Site #1	Al	24	0.75
1/14/16	Site #2	Al	120	0.75
1/14/16	Site #3	Al	23	0.75
12/18/15	Site 1	Al	12	0.75
12/18/15	Site 2	Al	30	0.75
12/18/15	Site 3	Al	24	0.75
12/3/15	Site #1	Al	74	0.75
12/3/15	Site #2	Al	61	0.75
12/3/15	Site #3	Al	34	0.75
2/6/15	Site #1	Al	8.2	0.75
2/6/15	Site#2	Al	15	0.75
2/6/15	Site #3	Al	69	0.75
12/10/14	Site #1	Al	4.9	0.75
12/10/14	Site #2	Al	13	0.75
12/10/14	Site #3	Al	18	0.75
12/10/14	Site #4	Al	0.940	0.75
2/7/14	Site #1	Al	4.5	0.75
2/7/14	Site #2	Al	18	0.75
2/7/14	Site #3	Al	25	0.75
12/20/12	Site #1	Al	3.31	0.75
12/20/12	Site #2	Al	23.1	0.75
4/26/12	Site #1	Al	1.9	0.75
4/26/12	Site #2	Al	9.8	0.75

1/19/12	Site #1	Al	5.3	0.75
1/19/12	Site #2	Al	12	0.75
1/19/12	Site #3	Al	20	0.75

e. Discharge of Storm Water Containing Iron (Fe) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
1/14/16	Site #1	Fe	39	1.0
1/14/16	Site #2	Fe	230	1.0
1/14/16	Site #3	Fe	24	1.0
12/18/15	Site 1	Fe	15	1.0
12/18/15	Site 2	Fe	48	1.0
12/18/15	Site 3	Fe	23	1.0
12/3/15	Site #1	Fe	110	1.0
12/3/15	Site #2	Fe	94	1.0
12/3/15	Site #3	Fe	52	1.0
2/6/15	Site #1	Fe	7.4	1.0
2/6/15	Site#2	Fe	22	1.0
2/6/15	Site #3	Fe	110	1.0
12/10/14	Site #1	Fe	6.1	1.0
12/10/14	Site #2	Fe	20	1.0
12/10/14	Site #3	Fe	31	1.0
12/10/14	Site #4	Fe	1.3	1.0
2/7/14	Site #1	Fe	4.4	1.0
2/7/14	Site #2	Fe	27	1.0
2/7/14	Site #3	Fe	37	1.0
12/20/12	Site #1	Fe	4.7	1.0
12/20/12	Site #2	Fe	34.2	1.0
12/20/12	Site #4	Fe	1.07	1.0
4/26/12	Site #1	Fe	2.3	1.0
4/26/12	Site #2	Fe	13	1.0
1/19/12	Site #1	Fe	6.5	1.0
1/19/12	Site #2	Fe	17	1.0
1/19/12	Site #3	Fe	28	1.0

f. Discharge of Storm Water Containing Copper (Cu) at Concentrations in Excess of Applicable EPA Benchmark and CTR Values

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)	CTR Criteria (mg/L)
2/6/15	Site #2	Cu	0.029	0.0636	0.013
2/6/15	Site #3	Cu	0.094	0.0636	0.013
12/10/14	Site #2	Cu	0.028	0.0636	0.013
12/10/14	Site #3	Cu	0.034	0.0636	0.013
12/10/14	Site #4	Cu	0.014	0.0636	0.013
2/7/14	Site #2	Cu	0.043	0.0636	0.013
2/7/14	Site #3	Cu	0.046	0.0636	0.013
12/20/12	Site #2	Cu	0.0614	0.0636	0.013
4/26/12	Site #2	Cu	0.020	0.0636	0.013
1/19/12	Site #2	Cu	0.024	0.0636	0.013
1/19/12	Site #3	Cu	0.051	0.0636	0.013

g. Discharges of Storm Water Exceeding the Basin Plan Standards for pH

Date	Discharge Point	Parameter	Concentration in Discharge (pH units)	Basin Plan (pH units)
2/6/15	Site #3	pH	8.76	6.5 – 8.5
4/26/12	Site #1	pH	6.2	6.5 – 8.5
1/19/12	Site #2	pH	8.7	6.5 – 8.5
1/19/12	Site #3	pH	9.9	6.5 – 8.5

h. Kernen Construction's Sample Results Are Evidence of Violations of the General Permit

Kernen Construction's sample results demonstrate violations of the Permit's discharge prohibitions, receiving water limitations and effluent limitations set forth above. CATs is informed and believes that Kernen Construction has known that its storm water contains pollutants at levels exceeding General Permit standards since at least May 13, 2011.

CATs alleges that such violations occur each time storm water discharges from the Facility. Attachment A hereto, sets forth the specific rain dates on which CATs alleges that Kernen Construction has discharged storm water containing impermissible levels of TSS, COD, Al, Fe, Zn, Cu, and pH in violation of the General Permit. 1997 General Permit, Discharge Prohibition A.2, Receiving Water Limitations C.1 and C.2; 2015 General Permit, Discharge Prohibitions III.C and III.D, Receiving Water Limitations VI.A, VI.B.

4. Kernen Construction Has Failed to Implement BAT and BCT

Dischargers must implement BMPs that fulfill the BAT/BCT requirements of the CWA and the General Permit to reduce or prevent discharges of pollutants in their storm water

discharges. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. To meet the BAT/BCT standard, dischargers must implement minimum BMPs and any advanced BMPs set forth in the General Permit's SWPPP Requirements provisions where necessary to reduce or prevent pollutants in discharges. *See* 1997 General Permit, Sections A.8.a-b; 2015 General Permit, Sections X.H.1-2.

Kernen Construction has failed to implement the minimum BMPs required by the General Permit, including: good housekeeping requirements; preventive maintenance requirements; spill and leak prevention and response requirements; material handling and waste management requirements; erosion and sediment controls; employee training and quality assurance; and record keeping. Permit, Section X.H.1(a-g).

Kernen Construction has further failed to implement advanced BMPs necessary to reduce or prevent discharges of pollutants in its storm water sufficient to meet the BAT/BCT standards, including: exposure minimization BMPs; containment and discharge reduction BMPs; treatment control BMPs; or other advanced BMPs necessary to comply with the General Permit's effluent limitations. 1997 General Permit, Section A.8.b; 2015 General Permit, Sections X.H.2.

Each day that Kernen Construction have failed to develop and implement BAT and BCT at the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). Kernen Construction have been in violation of the BAT and BCT requirements at the Facility every day since at least May 13, 2011.

5. Kernen Construction Has Failed to Implement an Adequate Monitoring Implementation Plan.

The General Permit requires dischargers to implement a Monitoring Implementation Plan. Permit, Section X.I. As part of their monitoring plan, dischargers must identify all storm water discharge locations. Permit, Section X.I.2. Dischargers must then conduct monthly visual observations of each drainage area, as well as visual observations during discharge sampling events. General Permit, Section XI.A.1 and 2.

Dischargers must collect and analyze storm water samples from two (2) storm events within the first half of each reporting year (July 1 to December 31) and two (2) storm events during the second half of each reporting year (January 1 to June 3). General Permit, Section XI.B. Section XI.B requires dischargers to sample and analyze during the wet season for basic parameters such as pH, total suspended solids ("TSS") and oil and grease ("O&G"), certain industry-specific parameters set forth in Table 2 of the General Permit, and other pollutants likely to be in the storm water discharged from the facility based on the pollutant source assessment. Permit, Section XI.B.6. Dischargers must submit all sampling and analytical results via SMARTS within thirty (30) days of obtaining all results for each sampling event. Section XI.B.11.

Kernen Construction has failed to develop and implement an adequate Monitoring Implementation Plan. These failures include using incorrect test methods to analyze samples and failing to analyze each sample for all required parameters.

Each day that Kernen Construction has failed to develop and implement an adequate Monitoring Implementation Plan is a separate and distinct violation of the Act and Permit. Kernen Construction has been in violation of the Monitoring Implementation Plan requirements every day since at least May 13, 2011.

6. Kernen Construction Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

The General Permit requires dischargers to develop and implement a site-specific SWPPP. 1997 General Permit, Section A.1; 2015 General Permit, Section X.A. The SWPPP must include, among other elements: (1) the facility name and contact information; (2) a site map; (3) a list of industrial materials; (4) a description of potential pollution sources; (5) an assessment of potential pollutant sources; (6) minimum BMPs; (7) advanced BMPs, if applicable; (8) a monitoring implementation plan; (9) annual comprehensive facility compliance evaluation; and (10) the date that the SWPPP was initially prepared and the date of each SWPPP amendment, if applicable. *See id.*

Dischargers must revise their SWPPP whenever necessary and certify and submit via the Regional Board's Storm Water Multiple Application and Report Tracking System ("SMARTS") their SWPPP within 30 days whenever the SWPPP contains significant revisions(s); and, certify and submit via SMARTS for any non-significant revisions not more than once every three (3) months in the reporting year. 2015 General Permit, Section X.B; see also 1997 General permit, Section A.

CATs's investigation indicates that Kernen Construction has been operating with an inadequately developed or implemented SWPPP in violation of General Permit requirements. Kernen Construction has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary, resulting in the Facility's numerous effluent limitation violations.

Each day Kernen Construction failed to develop and implement an adequate SWPPP is a violation of the General Permit. The SWPPP violations described above were at all times in violation of Section A of the 1997 General Permit, and Section X of the 2015 General Permit. Kernen Construction has been in violation of these requirements at the Facility every day since at least May 13, 2011.

III. Persons Responsible for the Violations.

CATs puts Kernen Construction on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CATs puts Kernen Construction on formal notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of each of the noticing parties is as follows:
Patricia Clary, Executive Director
Californians for Alternatives to Toxics
P.O. Box 900
Eureka, CA 95502
(707) 834-4833

V. Counsel.

CATs has retained legal counsel to represent it in this matter. Please direct all communications to:

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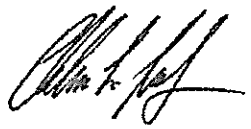
VI. Conclusion

CATs believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the CWA against Kernen Construction Company and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Andrew L. Packard
Law Offices of Andrew L. Packard
Counsel for Californians for Alternatives to Toxics

SERVICE LIST

VIA CERTIFIED MAIL

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U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Jared Blumenfield, Regional Administrator
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Hon. Loretta Lynch
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Matthias St. John, Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard Suite A
Santa Rosa, CA 95403

ATTACHMENT A
Notice of Intent to File Suit, Kernen Construction
Significant Rain Events,* 5/13/2011 – 5/13/2016

May 15, 2011	January 19, 2012	April 10, 2012	December 4, 2012
May 16, 2011	January 20, 2012	April 11, 2012	December 5, 2012
May 17, 2011	January 21, 2012	April 12, 2012	December 12, 2012
May 18, 2011	January 22, 2012	April 13, 2012	December 16, 2012
May 25, 2011	January 23, 2012	April 14, 2012	December 17, 2012
May 26, 2011	January 25, 2012	April 17, 2012	December 18, 2012
May 27, 2011	January 26, 2012	April 18, 2012	December 19, 2012
May 28, 2011	January 30, 2012	April 19, 2012	December 20, 2012
May 29, 2011	February 1, 2012	April 20, 2012	December 21, 2012
May 31, 2011	February 8, 2012	April 26, 2012	December 22, 2012
June 1, 2011	February 10, 2012	April 27, 2012	December 23, 2012
June 2, 2011	February 11, 2012	May 3, 2012	December 24, 2012
June 6, 2011	February 13, 2012	May 4, 2012	December 25, 2012
June 28, 2011	February 18, 2012	May 22, 2012	December 26, 2012
June 29, 2011	February 25, 2012	May 25, 2012	December 27, 2012
July 19, 2011	February 29, 2012	June 3, 2012	December 29, 2012
September 25, 2011	March 1, 2012	June 4, 2012	January 10, 2013
October 3, 2011	March 2, 2012	June 5, 2012	January 11, 2013
October 4, 2011	March 6, 2012	June 23, 2012	January 24, 2013
October 5, 2011	March 11, 2012	June 26, 2012	January 26, 2013
October 6, 2011	March 12, 2012	July 1, 2012	January 27, 2013
October 10, 2011	March 13, 2012	July 17, 2012	January 28, 2013
October 11, 2011	March 15, 2012	July 18, 2012	February 6, 2013
October 12, 2011	March 16, 2012	July 20, 2012	February 7, 2013
November 3, 2011	March 17, 2012	October 12, 2012	February 8, 2013
November 4, 2011	March 18, 2012	October 13, 2012	February 19, 2013
November 6, 2011	March 19, 2012	October 16, 2012	February 20, 2013
November 7, 2011	March 20, 2012	October 20, 2012	February 23, 2013
November 17, 2011	March 21, 2012	October 22, 2012	February 28, 2013
November 18, 2011	March 22, 2012	October 23, 2012	March 1, 2013
November 19, 2011	March 24, 2012	October 24, 2012	March 6, 2013
November 20, 2011	March 25, 2012	November 1, 2012	March 7, 2013
November 23, 2011	March 27, 2012	November 3, 2012	March 20, 2013
November 24, 2011	March 28, 2012	November 9, 2012	March 21, 2013
November 25, 2011	March 29, 2012	November 10, 2012	March 27, 2013
December 15, 2011	March 30, 2012	November 20, 2012	March 31, 2013
December 26, 2011	March 31, 2012	November 21, 2012	April 1, 2013
December 28, 2011	April 1, 2012	November 28, 2012	April 4, 2013
December 29, 2011	April 2, 2012	November 29, 2012	April 5, 2013
December 30, 2011	April 4, 2012	November 30, 2012	April 6, 2013
December 31, 2011	April 5, 2012	December 1, 2012	April 7, 2013
January 5, 2012	April 9, 2012	December 2, 2012	April 8, 2013
May 7, 2013	February 18, 2014	October 21, 2014	March 21, 2015
May 16, 2013	February 19, 2014	October 23, 2014	March 22, 2015

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

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Significant Rain Events,* 5/13/2011 – 5/13/2016

May 17, 2013	February 27, 2014	October 24, 2014	March 28, 2015
May 22, 2013	February 28, 2014	October 25, 2014	March 31, 2015
May 26, 2013	March 1, 2014	October 26, 2014	April 6, 2015
May 27, 2013	March 2, 2014	October 31, 2014	April 7, 2015
May 28, 2013	March 3, 2014	November 7, 2014	April 14, 2015
May 29, 2013	March 4, 2014	November 13, 2014	June 2, 2015
May 30, 2013	March 5, 2014	November 15, 2014	July 9, 2015
June 19, 2013	March 6, 2014	November 20, 2014	July 10, 2015
June 24, 2013	March 9, 2014	November 21, 2014	August 29, 2015
June 26, 2013	March 10, 2014	November 22, 2014	September 17, 2015
September 17, 2013	March 17, 2014	November 29, 2014	September 18, 2015
September 18, 2013	March 25, 2014	December 1, 2014	October 17, 2015
September 21, 2013	March 26, 2014	December 3, 2014	October 26, 2015
September 22, 2013	March 27, 2014	December 4, 2014	October 28, 2015
September 23, 2013	March 28, 2014	December 6, 2014	November 1, 2015
September 25, 2013	March 29, 2014	December 8, 2014	November 2, 2015
September 29, 2013	March 31, 2014	December 11, 2014	November 8, 2015
September 30, 2013	April 1, 2014	December 12, 2014	November 9, 2015
November 3, 2013	April 20, 2014	December 13, 2014	November 10, 2015
November 8, 2013	April 22, 2014	December 16, 2014	November 15, 2015
November 12, 2013	April 23, 2014	December 17, 2014	November 16, 2015
November 13, 2013	April 24, 2014	December 18, 2014	November 17, 2015
November 19, 2013	April 25, 2014	December 19, 2014	November 18, 2015
November 20, 2013	April 27, 2014	December 20, 2014	November 20, 2015
December 3, 2013	May 5, 2014	December 21, 2014	November 24, 2015
December 7, 2013	May 9, 2014	December 22, 2014	November 25, 2015
January 8, 2014	May 10, 2014	December 25, 2014	December 2, 2015
January 9, 2014	May 18, 2014	December 30, 2014	December 3, 2015
January 10, 2014	May 19, 2014	January 16, 2015	December 4, 2015
January 11, 2014	May 20, 2014	January 18, 2015	December 6, 2015
January 12, 2014	June 25, 2014	February 2, 2015	December 9, 2015
January 29, 2014	June 26, 2014	February 3, 2015	December 10, 2015
January 30, 2014	June 27, 2014	February 5, 2015	December 11, 2015
February 7, 2014	June 28, 2014	February 6, 2015	December 12, 2015
February 8, 2014	September 18, 2014	February 7, 2015	December 13, 2015
February 9, 2014	September 24, 2014	February 9, 2015	December 14, 2015
February 10, 2014	September 25, 2014	February 10, 2015	December 17, 2015
February 13, 2014	September 26, 2014	February 27, 2015	December 18, 2015
February 14, 2014	October 15, 2014	February 28, 2015	December 22, 2015
February 15, 2014	October 18, 2014	March 12, 2015	December 23, 2015
February 16, 2014	October 20, 2014	March 16, 2015	December 24, 2015
December 19, 2015	March 10, 2016	March 23, 2015	December 25, 2015
December 20, 2015	March 12, 2016	March 24, 2015	December 28, 2015
December 21, 2015	March 13, 2016	March 25, 2015	December 30, 2015

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Notice of Intent to File Suit, Kernen Construction
Significant Rain Events,* 5/13/2011 – 5/13/2016

January 5, 2016
January 6, 2016
January 8, 2016
January 9, 2016
January 10, 2016
January 12, 2016
January 13, 2016
January 14, 2016
January 15, 2016
January 16, 2016
January 17, 2016
January 18, 2016
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March 9, 2016
March 14, 2016
March 15, 2016
March 20, 2016
March 21, 2016
March 22, 2016
March 23, 2016
March 27, 2016
April 4, 2016
April 9, 2016
April 14, 2016
April 15, 2016
April 22, 2016
April 23, 2016
April 24, 2016
April 27, 2016
April 28, 2016

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